

# CPUC/adr



## ADR @ CPUC

### 1. FACILITATION

An Administrative Law Judge (ALJ) conducts workshop and uses good process skills to ensure that all viewpoints are heard and progress is made.

### 2. MEDIATION

With parties' consent, case is referred to trained ALJ mediator who holds joint and separate confidential meetings with parties to identify underlying interests and settlement approaches for resolving dispute.

### 3. EARLY NEUTRAL EVALUATION (ENE)

With their consent, parties present abbreviated versions of their case to one or more trained ALJ neutrals who provide early, non-binding opinions on the merits of the controversy.

### 4. SETTLEMENT CONFERENCES

ALJ holds intensive conferences with parties to help them negotiate by narrowing issues and exploring settlement options.

*CPUC's experimental program in its sixth month*

## ALJ Division Provides Interim Report on ADR Initiative

Alternative Dispute Resolution (ADR) approaches have been used at the CPUC for many years. However, on August 30, 2005, the Commission committed itself to a new and invigorated program to encourage the use of ADR in formal proceedings. In approving Resolution ALJ-185, the Commission indicated, "We believe ADR offers great potential to the Commission, and all who practice before the Commission, for improving decision-making processes in formal proceedings and certain other disputes."

ADR commonly describes processes, such as facilitation, negotiation, mediation, and early neutral evaluation (see left column), to help disputants resolve a conflict without a formal decision by a court or agency. When successful, ADR may achieve results that a court or agency could not order, give the parties more ownership in the result, and reduce litigation and agency costs. ADR is not appropriate for all proceedings--especially when the Commission must provide policy guidance.

After six months, the ALJ Division reports a successful, non-litigated settlement in approximately 50% of the cases referred to the ADR pilot program. Although based on a small number of cases, these results have been achieved in less time than in other formal proceedings.

In the next six months, the ALJ Division plans to increase the number of cases referred to ALJ, continue training for ALJs, and expand ADR training to other CPUC staff.

*Early feedback from utilities, public interest groups, and staff*

### Focus Groups Inform ADR Initiative

Before designing the ADR initiative, the CPUC's ALJ Division conducted three focus groups to gain the perspectives of people who participate frequently in formal proceedings. Moderated by a USC professor, separate meetings were held with utility, public interest group, and staff personnel. Anonymous summaries were provided to Commissioners and ALJ management. While very supportive of an ADR initiative, participants cautioned that neutrals would need to be well-trained, ADR efforts should not delay CPUC decision-making, and the Commission would need to be supportive of settlements, so long as they were lawful and in the public interest. These concerns have helped shape the new ADR initiative.

*CPUC establishes framework for ADR program*

### Basic Principles

In its August 2005 resolution, the Commission announced five basic principles that are the foundation to this ADR initiative:

♦ **Voluntary**--The parties usually must agree to submit their dispute to mediation or early neutral evaluation. An ALJ, however, may require parties to attend facilitated workshops, settlement conferences, or meet with a neutral to explore the feasibility of mediation.



♦ **Timeliness**--ADR should shorten, not prolong proceedings. But even if a negotiated settlement takes longer, the result may be more beneficial to all.

♦ **Good faith**--Those who engage in ADR should do so in an attempt to reach agreement--not to delay or secure tactical advantage.

♦ **Confidentiality**--Most ADR processes require confidentiality so that the parties' fundamental interests can be explored.

♦ **Commission approval**--The CPUC will expeditiously approve settlements that are legally sufficient.

#### *Emphasis on well-trained ALJs*

### **Training for Neutrals**

Twenty-five ALJs have been trained to use these ADR processes. The basic training consisted of a four-day program conducted by CPUC staff and ADR trainers from the U.S. Court of Appeals (9th Cir.), U.S. District Court (No. Dist.), and FERC. Also, several ALJs have received supplemental training at the National Judicial College, Harvard Law School, USC, and other programs. ALJs also receive periodic short-training courses. During 2006, training in negotiation and ADR will be offered to other CPUC staff.

#### *Complaints most common*

### **Type of Cases**

On a pilot basis, ADR is being used in all types of formal proceedings, but most commonly in complaint cases. These examples provide a cross-section:

- ♦ Homeowner's complaint against utility concerning relocation of pipeline crossing residential property.
- ♦ Environmental effects of proposed underground pipeline.
- ♦ DSL provider's complaint about alleged discriminatory treatment by utility.

♦ Rule-making to establish avoided cost payments for electricity purchased by utilities from alternative generators (QFs).

♦ Preventive mediation in new CPUC program enforcing maintenance and operation standards on electric generators.

♦ Early neutral evaluation of claims in a teleco interconnection dispute.

#### *Interim report encouraging*

### **Results**

Thirty-five proceedings have been referred to ADR (some are part of the same dispute). Fifty percent of these have settled (some require Commission consent) and 30% are still in ADR. Settlement was not achieved in the other 20% of the cases. Even in cases not settled, parties say they narrowed their dispute and better understood their opponent's concerns.

An interim assessment concludes:

♦ ADR works well in many complaint cases. People feel they are heard, practical solutions can be achieved, and time and resources can be saved.

♦ Rule-makings and other complex, multi-party proceedings are difficult to mediate. Earlier Commission policy advice may help. ALJs need more training and experience for these cases.

♦ ADR provides many ALJs with an interesting new dimension to their often tedious work.

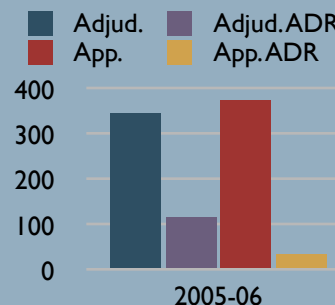
♦ Limited data reports time savings for settled cases (see right column).

#### *Gradual expansion envisioned*

### **Outlook**

The CPUC will expand the ADR program during 2006, identifying promising proceedings. ALJs will receive more training and gain experience. ADR is becoming an important dispute-resolution tool.

### **ADR TIME SAVINGS**



Days to close or settle case. Shows duration for all complaints & applications closed in 2005. For ADR matters, shows duration from filing (new cases) or referral to ADR (old cases) since mid-2005, when program commenced, to date. Limited data makes comparisons difficult.

#### **CPUC**

**Michael R. Peevey**  
President

**Geoffrey F. Brown**  
Lead Commissioner for ADR

**Angela K. Minkin**  
Chief Administrative Law Judge

**Philip S. Weismehl**  
Assistant Chief ALJ (ADR)



#### **CPUC**

**505 Van Ness Ave.**  
**San Francisco, CA 94102**  
**(415) 703-2782**  
**public.advisor@cpuc.ca.gov**  
**www.cpuc.ca.gov**

# Status

## Cases Referred to ADR Pilot

---

**Kline v. PG&E, C.05-01-022 (Kennedy/Barnett)**

Settled in anticipation of mediation and dismissed (169 days)

Dispute re line extension charges

---

**Alliance Group Services, A.04-12-029 (Peevey/McKenzie)**

Settlement reached after mediation; awaiting settlement documentation

Certificate of public convenience and necessity to provide facilities-based interexchange services statewide

---

**Marsden v. PG&E, C.04-12-023 (Brown/Vieth)**

Settled at mediation and dismissed (108 days)

Location and payment for pipelines across residential property

---

**Pac-West v. Sure West, R.95-04-043 & I.95-04-044 (local competition docket) (Peevey/Pulsifer)**

Parties agreed to mediation but did not follow through

Dispute over interconnection charges

---

**CAUSE v. SDG&E, C.04-12-012 (Brown/Simon)**

Mediation unsuccessful

Application of GO131D (CEQA) to underground transmission line

---

**Extreme Telecom v. SBC Advanced Solutions & Pacific Bell, C.05-04-013 (Grueneich/Thomas)**

Settled at mediation (148 days)

Alleged discriminatory treatment in DSL/XML functionality

---

**Raw Bandwidth Communications, Inc. v. SBC California & SBC Advanced Solutions, C.03-05-023 (Brown/Grau)**

Mediation unsuccessful

Advance notice of disconnection of DSL transport upon cancellation of voice service

<b>Walnut Grove Mobile Home Park v. SoCalGas Co. (mediated in advance of formal filing)</b>	Settled at mediation (formal proceeding avoided)
Applicable tariff for submetering	
<b>City of Gridley (Union Pacific RR Crossing), A.04-02-03 I</b>	Remains in active mediation
Rail crossing safety	
<b>Quest Communications &amp; Quest Interprise America v. SBC California, C.05-05-030 (Bohn/Bushey)</b>	Determined ADR eligible but later determined that ADR premature; ADR may be attempted later in proceeding
Alleged overpayments for colocation arrangements	
<b>Garrapata Mutual Water Co, (Yacknin)</b>	Referred to ADR; settled at prehearing conference (132 days)
<b>City of American Canyon, A.05-05-014 (Grueneich/Ryerson)</b>	Mediation unsuccessful
At-grade railroad crossing in Napa County	
<b>R.02-11-039, Implementation of GO 167 (Peevey/Mattson &amp; Thorson)</b>	Remains in active mediation
Preventive mediation to assist in implementation of new general order imposing operations & maintenance standards on electric generators	
<b>C.00-05-010, C.00-05-011 &amp; C.00-05-012, Boppa v. SoCalGas (Bohn/Brown)</b>	Settled at mediation (114 days after old case referred to mediation)
Gas leak	
<b>Fruitridge Vista Water Co., A.05-10-005, C.05-09-011, C.05-09-012, C.05-09-027, C.05-10-011, C.05-10-007 (Bohn/Walker)</b>	Remains in active mediation; partial settlement or settlement with less than all parties may be submitted to Commission for approval (depending on case, 133-168 days from filing to apparent settlement)
Application and complaints re extension of water service for growing community	
<b>Single Room Occupancy Housing Corp. v. SoCalGas, C.05-10-020 (Grueneich/Econome)</b>	Dispute settled and complaint dismissed at settlement conference with assigned ALJ (42 days)
Dispute about applicable tariff	

**Avoided Cost Proceedings, R.04-04-003 & R.04-04-025 (Peevey/Brown & Halligan)**

Agreement only on minor issues after 10 days of mediation

Determining avoided cost for payments to qualifying facilities (QFs)

**Collins v. North County Transit District, C.05-10-008 (Grueneich/Weissman)**

In active mediation

Status and improvements to at-grade railroad crossing

**Telephone Connection Local Services v. Pacific Bell, R.95-04-043 & I.95-04-044 (local competition docket) (Peevey/Pulsifer)**

Settled at mediation

Dispute over interconnection charges

**Painted Turtle v. SCE, C.05-07-007 (Brown/Econome)**

Dispute settled and complaint dismissed after active settlement efforts by assigned ALJ (213 days)

Alleged excessive charges and rates

**Conlin-Strawberry Water Co., I.03-10-038 & A.05-12-001 (Brown/Thorson)**

Settled at mediation; pending Commission decision (94 days following petition & motion, 46 days following application)

Petition for rehearing, motions for modification, dispute over receivership petition, application for transfer of ownership

**DSLExtreme v. Verizon, C.05-09-008 (Peevey/Grau)**

Early neutral evaluation held (3 ALJs involved for training purposes; after ENE, parties asked for mediation; in active mediation)

Alleged anticompetitive and discriminatory practices and unreasonable services

**Southwest Gas Corp. v. SoCalGas & PG&E, C.05-10-033 (Bohn/Cooke)**

In active mediation

Complaint to require system improvements so that Big Bear customers are not without natural gas

**Bee Sweet Citrus v. SCE, C.05-11-004 (Bohn/Econome)**

In active mediation

Billing and service quality dispute